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9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

11 EDWARD PEÑA and BRANDON
12 MILLER, *individually and on behalf*
13 *of persons similarly situated,*

14 *Plaintiff,*

15 *v.*

16 INTERNATIONAL MEDICAL
17 DEVICES, INC., MENOVA
18 INTERNATIONAL, INC., GESIVA
19 MEDICAL, LLC, JAMES J. ELIST,
20 M.D., A MEDICAL
CORPORATION, AND DR.
JAMES ELIST,

21 *Defendants*

Case No. 2:22-cv-03391-SS (RAOx)

**JOINT STIPULATION TO
CONTINUE CLASS
CERTIFICATION BRIEFING
DEADLINES**

22
23 The parties jointly file this Stipulation to continue the deadlines previously set
24 for class certification briefing in this action as follows:

25 WHEREAS, On May 11, 2023, following the parties' Rule 26(f) conference,
26 Defendants served their written responses and objections to Plaintiff's First Set of
27

1 written discovery, in which they agreed to produce certain categories of documents,
2 subject to Plaintiff's agreement that that any document production would not
3 constitute waiver of Defendants' right to file a motion to compel arbitration;

4 WHEREAS, On May 26, 2023, Defendants produced documents Bates
5 numbered PENU_0000001-0000279, stating that they would make a further
6 production of confidential documents following the entry of a protective order and
7 subject to the parties' agreement as to waiver of Defendants' right to file a motion
8 to compel arbitration;

9 WHEREAS, On July 7, 2023, the parties filed a Joint Rule 26 Report,
10 proposing deadlines for completion of discovery and in which Defendants indicated
11 they were evaluating a potential motion to compel arbitration;

12 WHEREAS, On July 19, 2023, Plaintiffs filed a Third Amended Complaint,
13 adding new named Plaintiff Brandon Miller (Dkt. 71) and additional allegations;

14 WHEREAS, On July 20, 2023, the Court issued a Scheduling Order, which
15 included a deadline for Plaintiffs to file their Motion for Class Certification and any
16 Class Certification Expert Report on January 17, 2024, (Dkt. 73);

17 WHEREAS, the Court entered a Stipulated Protective Order on August 4,
18 2023, (Dkt. 76);

19 WHEREAS, on August 7, 2023, Defendants filed a Motion to Compel
20 Arbitration and Stay Proceedings (Dkt. 77);

21 WHEREAS, Defendants have paused additional document productions until
22 their Motion to Compel Arbitration and Stay Proceedings is resolved;

23 WHEREAS, Defendants presently intend to appeal any denial of their Motion
24 to Compel Arbitration to the Ninth Circuit Court of Appeals, which will result in an
25 automatic stay of discovery pursuant to the Supreme Court's recent decision in
26 *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023);

1 WHEREAS, on October 4, 2023, following the parties' meet and confer
2 regarding Defendants' written responses and objections, which resolved certain
3 disputes regarding these objections, Plaintiffs filed a Motion to Compel asking the
4 Magistrate Judge to compel Defendants to produce documents in accordance with
5 their written responses and agreements reached in the parties' meet and confer
6 discussions, a privilege log, and certain categories of documents within 30 days;

7 WHEREAS, on November 27, 2023, the Magistrate Judge denied Plaintiffs'
8 Motion to Compel and declined to address the stay issue because Defendants'
9 Motion to Stay remains pending before the district judge, (Dkt. 91);

10 WHEREAS, despite the parties' diligence, additional time will be required
11 following resolution of the Motion to Compel Arbitration and to Stay for the
12 completion of discovery on class certification and for Plaintiffs' expert to prepare
13 his report;

14 WHEREAS, the parties agree that an additional 120 days will allow sufficient
15 time to complete these tasks:

16 IT IS HEREBY STIPULATED by and between the parties to this action
17 through their designated counsel that:

18 1. Plaintiffs shall file their Motion for Class Certification and any Class
19 Certification Expert Report 120 days after the resolution of Defendants' Motion to
20 Compel Arbitration and to Stay and any related appeals;

21 2. Defendants shall file any opposition to Class Certification and any Class
22 Certification Expert Report 42 days after Plaintiffs' Motion for Class Certification.

23 3. Plaintiffs shall file any Reply in Support of Class Certification and any
24 Class Certification Rebuttal Expert Report 28 days after Defendants' Opposition.

25 4. The Court shall set a Class Certification hearing date at a convenient date
26 at least 28 days after Plaintiffs' Reply.

1 Dated: December 15, 2023

Respectfully submitted,

2 By: /s/ Michael A. Caddell

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CERTIFICATE OF SERVICE

I, Amy E. Tabor, hereby certify that on December 15, 2023 this document was filed with the Court using the CM/ECF system and thereby served on all counsel of record.

/s/Amy E. Tabor